

Present were: Anderson (Chair); McDonough (Clerk); Brown & Batchelder (Members); Baime, Mately & Ranalli (Associate Members).

The meeting opened at 7:08 p.m.

Petition No.: 3882

Premises affected: 43 River Rd

Petitioner: T-Mobile

Members: Baime, Brown, McDonough, Ranalli, Mately

Anderson recused himself from the hearing. Brown made a motion to close the continued public hearing. McDonough seconded the motion and the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate.

Brown made a motion to find that the proposed tower is not unreasonably detrimental to the established or future character of the neighborhood and town and that such is in harmony with the general purpose and intent of this by-law and therefore to grant the special permit under section 6.1.2 for the tower, antenna, equipment, and to allow the decreased setback subject to the conditions set forth in the draft decision, as revised by Town Counsel. Baime seconded the motion. Brown noted further formatting & punctuation revisions on an electronic copy which was submitted to the administrative secretary. The Board voted (5-0) to grant the special permit with conditions as revised by Town Counsel and Brown.

Petition No.: 3895

Premises affected: 1 Shaw Drive

Petitioner: Schwartz

Members: Anderson, Baime, Batchelder, McDonough, Brown

Town Counsel presented his findings: the designation of 1 Shaw Drive as "common land" on the 1961 special development subdivision plan did not, absent more, render 1 Shaw Drive subject to a perpetual restriction that it be forever kept open and maintained as common land for the subdivision. He noted that there were no documents provided to the Board which indicated that (1) any lot owners had been deeded rights to the "common land" in question here or (2) that the Planning Board had placed a recorded restriction or condition upon that land. Citing *Patel v. Planning Board of North Andover*, 27 Mass. App. Ct. 477 (1989), Town Counsel advised the Board that the words "common land" noted on a particular lot in a subdivision plan (without a document of conveyance) in and of themselves do not operate to legally transfer any easement, ownership or restrictive rights to owners of the other subdivision lots. Attorney David Bernardin, counsel for certain neighbors who oppose the project, argued that the designation of the 1 Shaw Drive parcel as "common land" on the 1960 approved subdivision plan was "tantamount to a **dedication** to common land use, or non-buildability, upon which the buyers of Wildwood Acres lots, especially abutters to this parcel, could rely". He further argued, *inter alia*, that "the recording of the plan as labeled, coupled with the deed by the developer to the town, which includes the larger parcels [of common land], and which deed **should** have included the locus, constitutes a **grant**, since the developer secured his Planning Board approval on that basis". Attorney Johnson argued that the designation of the parcel as "common land" on the 1961 special development subdivision plan did not impose any restriction on the land. Attorney Johnson cited the fact that G.L. c. 40A, § 9 was adopted in 1975 – some 14 years after the 1961 subdivision. The Board voted to close the public hearing on September 9, 2010 and deliberated immediately thereafter.

The Board determined that the Pearson House is a unique historic icon; its preservation would be for the good of the community; and the proposed project meets the requirements of Section 7.9 of the Andover Zoning Bylaw to qualify for historical preservation. The proposed work, including reconstruction, will preserve, to the maximum extent feasible, the

historic & architectural features of the Pearson House. In the absence of the special permit and variances, the destruction of the house would result. Accordingly, the Board voted 5 to 0 to grant a Dimensional Special Permit for Historic Preservation under Section 7.9, subject to the following conditions:

1. All work and improvements are to be completed in substantial conformance with the Site Plan submitted to the Board (Andover Consultants, Inc., dated June 3, 2010), the Site Plan, Exterior Elevations and Floor Plans submitted to the Board (Rob Bramhall Architect dated 7/8/10), and the specifications presented to the Board in the application and at the public hearing (collectively the "Plans").
2. In the event that (a) the historic Pearson House is destroyed, or its exterior historic features are damaged beyond repair, during its relocation to the new lot, or (b) that during the course of rehabilitation of the Pearson House on the new lot it is found that the historic structure cannot be saved, then this Dimensional Special Permit for Historic Preservation shall be null and void and of no further force or effect. No addition to the historic Pearson House shall be constructed on the new lot unless and until the historic Pearson House shall have been successfully relocated to and installed on its foundation upon the new lot. This condition shall not prevent reasonable site preparation work and/or the installation of a foundation for the proposed additions and improvements prior to the relocation of the historic Pearson House to the new lot; however, the improvements shall be removed and the new lot shall be reasonably restored to its pre-existing condition (tree removal excepted) in the event this Dimensional Special Permit for Historic Preservation shall become null and void by virtue of the operation of the first sentence of this paragraph.
3. The Applicants shall record at the Essex North District Registry of Deeds an Historic Preservation Restriction in a form (a) consistent with § 7.9.6.5 of the Bylaw, (b) approved by the Zoning Board of Appeals and Town Counsel, and (c) approved and endorsed by the Massachusetts Historical Commission in accordance with Massachusetts General Law Chapter 184, Section 32, of the General Laws. The Historic Preservation Restriction must be recorded at the Essex North District Registry of Deeds in Lawrence, Massachusetts prior to the issuance of a Building Permit (other than a foundation permit) for any addition to the historic Pearson House on the new lot. If required, the Historic Preservation Restriction must include a set of detailed architectural plans to be approved by the Town Counsel and the Zoning Board of Appeals.
4. In the event the Petitioner wishes to make changes or additions to the historic Pearson House beyond those shown on the Plans, any such changes or additions must be submitted to the Andover Preservation Commission for review and approval. If the Andover Preservation Commission determines that the proposed changes or additions are not minor, the Applicants must seek a modification of the Special Permit from the Board of Appeals before constructing, installing, or otherwise making any such changes or additions.
5. To the extent required by law, the Applicants will obtain approvals from the Conservation Commission and the Board of Health prior to submitting a Building Permit.
6. There shall be no further subdivision of the new lot as shown on the Plans.
7. The minimum conditions required by Section 7.9.6 of the Zoning Bylaw to be incorporated in this special permit are also hereby incorporated herein by reference and, in the event of a conflict with the above stricter conditions, the stricter condition shall control.

Petition No.: 3899

Premises affected: 128 High St

Petitioner: Tao / Yu

Members: Anderson, Baime, Batchelder, Brown, Matey

Aternates: McDonough, Ranalli

Tom Tao appeared before the Board on behalf of himself & his wife, Yan Lu, seeking a Special Permit, or a variance to expand the second floor of their home. It is located in the SRA district on a lot with 19,440± square feet & 100' of frontage. According to a Certified Plot Plan (Charles J. Brennan, RLS, dated 6-23-09), the nearest corner of the house is

34' from the front lot line. The second floor expansion encroaches into the required minimum front yard setback. The original house was constructed in 1950, at which time the required front yard setback was 30 feet. The improvements were commenced by the Petitioners' contractor pursuant to Building Permit B10-0319 (shell only), issued by the Building Division on April 22, 2010. The zoning violations were discovered during a review of the conditions of the building permit. The Petitioners asserted that a strict enforcement of the provisions of the Zoning Bylaw would result in a huge financial hardship. The project as completed is more energy efficient, easier to maintain, and fits in better with other houses in the neighborhood. No one else appeared to speak either for or against the petition. The Board voted to waive a viewing of the premises & closed the public hearing. The Chair designated Ranalli and McDonough to sit as alternates for this case and the Board proceeded to deliberate.

The Board finds that the existing house is a lawfully preexisting, nonconforming structure in that it conformed to the requirements of the Zoning Bylaw at the time it was built, but does not conform to the current minimum front yard requirement of 35 feet in the SRA district. The Board further finds that the second floor expansion expands the nonconforming nature of the structure by increasing the building's volume within the required front yard area, but does not create any new nonconforming conditions. Relief may be appropriately granted by Special Permit under Article VIII, §3.3.5. The Board finds, considering the criteria set forth in §9.4.2, that the encroachment into the required front setback is minimal & the expansion is consistent in scale with other nearby houses in the neighborhood and will not be unreasonably detrimental to the established or future character of the neighborhood, and is consistent with the general purpose and intent of the Zoning Bylaw. The Board further notes that in cases such as this, where the work has been executed prior to the request for relief, its approach generally is to treat the case as though the application for zoning relief had been submitted in a timely manner. The Board votes unanimously to grant a Special Permit under Article VIII, §3.3.5 to allow the second floor expansion as described in the submitted drawings and completed. Relief having been granted by Special Permit, the Board votes unanimously to deny the request for a variance as moot. Brown will write the decision.

Petition No.: 3900

Premises affected: 9 Shipman Rd

Petitioner: Viscosi

Members: Anderson, Baime, McDonough, Brown, Ranalli

Alternates: Matey, Batchelder

Valerie Viscosi appeared on behalf of herself & her parents. Ms. Viscosi was granted a Special Permit (#2957) in 1999 to allow construction & use of a two-story in-law apartment for use by Ms. Viscosi's parents, Daniel and Mary Viscosi. That permit was granted for 5 years & expired without renewal. A subsequent Special Permit (#3456) was granted on 10/13/04, again for 5 years. That permit has now also expired. Ms. Viscosi is now seeking reissuance of a Special Permit for an additional five year period. Her parents continue to live with her; with regard to need the situation is the same as it was when the permit was initially granted. A letter from Mr. Viscosi's physician, dated August 12, 2010, was submitted in support of the application. No one else appeared at the public hearing to speak either for or against the application. The Board voted to waive a viewing of the premises and closed the public hearing. The Chair designated Batchelder and Matey to sit as alternates for this case. Deliberations were conducted immediately thereafter.

The Board found that the conditions supporting the original grant of a Special Permit remain in place. Use of the premises for a family dwelling unit has not proven to be unreasonably detrimental to the established or future character of the neighborhood and town and is in harmony with the general purpose and intent of the Zoning By-law. There are no adverse impacts to traffic flow or safety. Utilities and public services are adequate, and there are no demonstrated impacts on the natural environment. The Board therefore votes unanimously to grant a Special Permit under §3.1.3.F.4 of the Zoning Bylaw to allow continued use of the aforementioned family dwelling unit, subject to the following conditions: 1. This permit is specific to the occupancy of the premises by Daniel & Mary Viscosi, either individually or

together, and shall lapse if neither party occupies the unit for a period in excess of 1-year. 2. This permit shall be in effect for a period of five years, which may be renewed upon timely application to this Board if the need still exists. Brown will write the decision

Petition No.: 3876

Premises affected: 39-47 High Plain Rd

Petitioner: Gibson

Members: Anderson, Baime, McDonough, Matey, Ranalli

There was a request to re-open deliberation &/or public hearing to reconsider the decision taken at the 8/5/10 meeting. Baime made a motion to re-open the deliberation. McDonough seconded the motion & the Board voted (5-0) to re-open deliberation. There being no motion to re-open the public hearing Baime made a motion to uphold the Board's original decision. McDonough seconded the motion & the Board voted (5-0) to uphold the original decision.

Discussion Item:

Wild Rose Estates Drainage Easement Rights to 259 Lowell Street

Anderson gave an update on a private dispute with Wild Rose Estates amongst neighbors: there is no issue with the ZBA decision as the condition is satisfied since the project has been connected.

CHAPA update

There was a motion to adjourn & a second. The Board voted (5-0) to adjourn the meeting at 9:50 p.m.